

§ 5.13 Coast Guard District.

A *Coast Guard District* is a geographical area as described in 33 CFR part 3 which is under the command of a Coast Guard officer designated by the Commandant as the Coast Guard District Commander.

§ 5.15 Investigating Officer.

An *investigating officer* is a Coast Guard official designated by the Commandant, District Commander, or the Officer In Charge, Marine Inspection, for the purpose of conducting investigations of marine casualties or matters pertaining to the conduct of persons issued a license, certificate or document by the Coast Guard. An Officer in Charge, Marine Inspection is an investigating officer without further designation.

§ 5.19 Administrative Law Judge.

(a) An *Administrative Law Judge* shall mean any person designated by the Commandant pursuant to the Administrative Procedure Act (5 U.S.C. 556(b)) for the purpose of conducting hearings arising under 46 U.S.C. 7703 or 7704.

(b) The Commandant has delegated to Administrative Law Judges the authority to admonish, suspend with or without probation or revoke a license, certificate or document issued to a person by the Coast Guard under any navigation or shipping law.

§ 5.23 Charge.

(a) A *charge* is the designation in general terms of an act or offense within the purview of 46 U.S.C. 7703 or 7704. A charge must be supported by one or more *specifications*. Under no circumstances does a *charge* constitute evidence nor may any inference be drawn from the fact that the holder of a license, certificate or document has been the subject of a *charge*.

(b) A charge must be stated as one of the following:

- (1) Misconduct;
- (2) Negligence;
- (3) Incompetence;
- (4) Violation of law or regulation;
- (5) Conviction for a dangerous drug law violation, use of a dangerous drug, or addition to the use of dangerous drugs.

§ 5.25 Specification.

A *specification* sets forth the facts which form the basis of a *charge* and enables the respondent to identify the act or offense so that a defense can be prepared. Each specification shall state:

- (a) Basis for jurisdiction;
- (b) Date and place of act, or offense; and
- (c) The facts constituting the alleged act or offense.

§ 5.27 Misconduct.

Misconduct is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.

§ 5.29 Negligence.

Negligence is the commission of an act which a reasonable and prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonable and prudent person of the same station, under the same circumstances, would not fail to perform.

§ 5.31 Incompetence.

Incompetence is the inability on the part of a person to perform required duties, whether due to professional deficiencies, physical disability, mental incapacity, or any combination thereof.

§ 5.33 Violation of law or regulation.

Where the proceeding is based exclusively on that part of title 46 U.S.C. section 7703, which provides as a basis for suspension or revocation a violation or failure to comply with 46 U.S.C. subtitle II, a regulation prescribed under that subtitle, or any other law or regulation intended to promote marine safety or protect navigable waters, the *charge* shall be *violation of law* or *violation of regulation*. The *specification* shall state the specific statute or regulation by title and section number, and the

particular manner in which it was allegedly violated.

§ 5.35 Conviction for a dangerous drug law violation, use of, or addiction to the use of dangerous drugs.

Where the proceeding is based exclusively on the provisions of title 46, U.S.C. 7704, the *charge* will be *conviction for a dangerous drug law violation or use of dangerous drugs or addiction to the use of dangerous drugs*, depending upon the circumstances. The *specification* will allege jurisdiction by stating the elements as required by title 46, U.S.C. 7704, and the approximate time and place of the offense.

Subpart C—Statement of Policy and Interpretation

§ 5.51 Construction of regulations.

The regulations in this part shall be construed so as to obtain a just, speedy, and economical determination of the issues presented.

§ 5.53 Initiating suspension and revocation proceedings.

Suspension and revocation proceedings are initiated upon service of charges preferred by an investigating officer.

§ 5.55 Time limitations for service of charges and specifications.

(a) The time limitations for service of various charges and specifications upon the holder of a license, certificate or document are as follows:

(1) When based exclusively on 46 U.S.C. 7704, service shall be within 10 years after the date of conviction, or at anytime if the person charged is a user of or addicted to the use of a dangerous drug.

(2) For one of the misconduct offenses specified in § 5.59(a) or § 5.61(a), service shall be within five years after commission of the offense alleged therein.

(3) For an act or offense not otherwise provided for, the service shall be within three years after the commission of the act or offense alleged therein.

(b) When computing the period of time specified in paragraphs (a) (2) and (3) of this section there shall be ex-

cluded any period or periods of time when the respondent could not attend a hearing or be served charges by reason of being outside of the United States or by reason of being in prison or hospitalized.

§ 5.57 Acting under authority of license, certificate or document.

(a) A person employed in the service of a vessel is considered to be acting under the authority of a license, certificate or document when the holding of such license, certificate or document is:

- (1) Required by law or regulation; or
- (2) Required by an employer as a condition for employment.

(b) A person is considered to be acting under the authority of the license, certificate or document while engaged in official matters regarding the license, certificate or document. This includes, but is not limited to, such acts as applying for renewal of a license, taking examinations for upgrading or endorsements, requesting duplicate or replacement licenses, certificates or documents, or when appearing at a hearing under this part.

(c) A person does not cease to act under the authority of a license, certificate or document while on authorized or unauthorized shore leave from the vessel.

§ 5.59 Offenses for which revocation of licenses, certificates or documents is mandatory.

An Administrative Law Judge enters an order revoking a respondent's license, certificate or document when—

(a) A charge of misconduct for wrongful possession, use, sale, or association with dangerous drugs is found proved. In those cases involving marijuana, the Administrative Law Judge may enter an order less than revocation when satisfied that the use, possession or association, was the result of experimentation by the respondent and that the respondent has submitted satisfactory evidence that he or she is cured of such use and that the possession or association will not recur.

(b) The respondent has been a user of, or addicted to the use of, a dangerous